

RESEARCH BRIEF

THE RIGHT TO A HEALTHY ENVIRONMENT

KEY MESSAGES

- Climate change and environmental degradation pose severe threats to the enjoyment of all human rights, particularly the rights of those who are already disadvantaged and marginalised. A healthy environment is therefore indispensable for the full realization of human rights.
- Human rights jurisprudence demonstrates that the environmental dimensions of human rights are important for both procedural and substantive human rights. The relationship between the environment and human rights has also resulted in the recognition of a distinct environmental human right. Environmental rights have been included in regional human rights instruments as well as in international human rights instruments targeting certain groups, including indigenous peoples, peasants and other people working in rural areas. Until recently, a universal right to a healthy environment was not recognized at the international level.
- In 2021, Human Rights Council resolution 48/13 recognized the right to a clean, healthy and sustainable environment (right to a healthy environment). This recognition has been welcomed, and holds much potential for strengthening human rights and environmental protection. A similar resolution was adopted in July 2022 by the General Assembly. Although neither of the resolutions elaborates on the scope or content of the right, many commentators agree that key elements of the right are captured in the work of the Special Rapporteur on human rights and the environment.
- Although these resolutions are not directly binding, the recognition of the right to a healthy environment carries with it a number of important benefits, including the potential to support efforts for formal (and binding) recognition of the right elsewhere. The resolutions can also advance the integration of the environment and human rights within the Human Rights Council and the General Assembly.
- There are opportunities for both the Human Rights Council and the General Assembly to incorporate references to the right in their future resolutions when addressing matters that concern the environment and human rights. This mainstreaming of the right to a healthy environment can aid in the development and implementation of the right itself, as well as in the development of the relationship between human rights and the environment in international law.

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INTRODUCTION

Human rights and the environment are deeply intertwined. The realization of human rights depends on a healthy environment, and effective environmental protection is not possible without taking human rights into account. This relationship is underscored in the recognition of the right to a clean, healthy and sustainable environment (right to a healthy environment) by the Human Rights Council and the General Assembly.

Resolutions from the Human Rights Council and the General Assembly have previously affirmed the interdependent relationship between human rights and the environment. Following the recognition of the right to a healthy environment, it is important to consider how future resolutions can incorporate this right and strengthen the linkages between human rights and the environment.

This research brief outlines the relationship between human rights and the environment in international law, the meaning and implications of the right to a healthy environment, and, finally, the links between human rights and the environment in resolutions from the Human Rights Council and the General Assembly. The brief provides recommendations for how future resolutions could refer to the right to a healthy environment and affirm the important relationship between human rights and the environment.

THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

The well-being and survival of human beings is inextricably connected to the environment and natural resources. However, human activity is threatening the environment and the life-supporting services it provides. Environmental challenges such as biodiversity loss, desertification, pollution and climate change pose a significant threat to human rights.

While all human rights are at risk from climate change and other environmental degradation, it is well established that environmental harm disproportionately affects those who are already disadvantaged and marginalised. For example, the former Special Rapporteur on extreme poverty and human rights has referred to climate change as ‘an unconscionable assault on the poor’.

The risks and impacts associated with environmental crises are extensive and severe. Human rights cannot be adequately respected, protected, and fulfilled without

environmental protection. A healthy environment is therefore indispensable for the full realization of human rights for everyone.

A wealth of international and regional jurisprudence affirms the interconnectedness of the environment and human rights. The critical role of the environment in the realization of human rights has been recognized in the context of substantive and procedural human rights, as well as in the context of decisions related to distinct environmental rights.

Human rights courts and treaty bodies have recognised the environmental dimensions of various substantive rights. These include the rights to respect for private and family life, safe and healthy working conditions, health, non-discrimination, development, culture, and life, as well as indigenous peoples’ communal property rights.

Human rights jurisprudence affirms that procedural rights play a vital role in the protection of human rights and the environment. The rights of access to information, public participation, and access to justice are critical for protecting substantive human rights from environmental harm, and for protecting the environment itself.

Some human rights fora have also recognized or applied distinct environmental rights. Such environmental rights have been adjudicated on in the African and Inter-American human rights systems, while environmental rights have also been recognised in a few instances within the European human rights jurisprudence.

The jurisprudence of human rights courts and treaty bodies affirms the important link between human rights and the environment. It is also evident that the rate of such cases has increased in recent years. Following the recognition of the right to a healthy environment by the General Assembly, and the increase in climate impacts affecting human rights, it is likely that human rights courts and treaty bodies will continue to underscore this interdependence between human rights and the environment with greater confidence and frequency.

The interdependence between the environment and human rights is also important when considering the role of international environmental law. Environmental law can serve as an important guide in the adjudication and implementation of the environmental dimensions of human rights. This can be done through providing guidelines and standards in environmental matters; establishing principles to guide decision-making concerning the environment; and broadening the enforcement mechanisms available.

Environmental degradation disproportionately affects the human rights of those who are already disadvantaged and marginalised

For example, principles of environmental law, such as the precautionary principle, have been relied on by courts and treaty bodies to guide the interpretation and application of human rights in environment-related matters.

There are also those multilateral environmental agreements that directly incorporate human rights. For example, human rights have been referred to in the preambles of climate agreements (see, for example, the Paris Agreement and the Glasgow Pact). In addition, two prominent regional environmental instruments, the Aarhus Convention and Escazú Agreement, have included procedural environmental rights, including the rights of access to environmental information, participation in environmental decision-making and access to justice. Notably, the Escazú Agreement also recognizes the right to a healthy environment and provides for the protection of environmental defenders.

THE RIGHT TO A HEALTHY ENVIRONMENT

Prior to the recent recognition of the right to a healthy environment by the General Assembly, this right was recognized in a number of national constitutions as well as in some regional human rights instruments. It appears in the African Charter on Human and Peoples' Rights (1981), in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) and in the Escazú Agreement (2018).

As John Knox has pointed out, the recognition of environmental rights 'came too late to be codified in the major international human rights agreements' as the Universal Declaration of Human Rights was adopted in 1948, and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were both adopted in 1966.

In 2007, the environmental rights of indigenous peoples were recognized in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and in 2018 a similar right was recognized in the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).

In 2021, the right to a healthy environment received

international recognition through resolution 48/13 of the Human Rights Council. This recognition was reaffirmed by the General Assembly in July 2022 through resolution 76/300.

While these resolutions clearly recognize the right to a healthy environment, they do not say much about the content and scope of this right. Although this is the first time that the right has been recognised on an international level, the right to a healthy environment has existed for many years in regional and national laws. The body of work from the Independent Expert and Special Rapporteur on human rights and the environment provides an overview of what has already been established about the right to a healthy environment in national, regional and international law.

In addition to various thematic reports and compilations of good practices in the context of human rights and the environment, the work of the Special Rapporteur also outlines out a set of framework principles on human rights and the environment. These framework principles set out the basic obligations of states under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.

The work of the Special Rapporteur affirms the basic procedural and substantive elements of the right to a healthy environment. The procedural elements of the right are: access to environmental information; public participation in environmental decision-making; and access to justice. The substantive elements of the right are: clean air; a safe climate; healthy and sustainably produced food; access to safe water and adequate sanitation; non-toxic environments in which to live, work and play; and healthy ecosystems and biodiversity. Read

with the Framework Principles on Human Rights and the Environment, these elements contain the basic foundation of the right to a healthy environment.

Having considered the meaning of the right, it is useful to briefly discuss the purpose and advantages of recognizing the right to a healthy environment. The Special Rapporteur has asserted that recognition of the right aids the development of human rights norms that relate to the environment, and that it also supports national and regional norms in this area. The right also raises the profile

The Human Rights Council and the General Assembly have both recognised the right to a clean, healthy and sustainable environment as a human right

'The human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been exhaustively discussed, debated, defined and clarified over the past 45 years.'

Former Special Rapporteur on Human Rights and the Environment, John H. Knox

of environmental protection; provides a basis for stronger environmental laws and regulations; provides an impetus for the inclusion of the right within national laws as well as regional systems that do not yet recognize it; and provides a fundamental principle that can shape, strengthen and unify environmental law. The right is particularly valuable for individuals and communities in jurisdictions where the right to a healthy environment is not recognised in domestic law. Recognizing this right will lead to greater priority for its fulfilment and could serve as a significant catalyst for action to respect, protect and fulfil the right.

As many commentators have noted, what is important now is the effective implementation of the right. The recognition of the right does not carry much weight without decisive action to fulfil the right to a healthy environment. As noted by the former UN High Commissioner for Human Rights, Michelle Bachelet: ‘Bold action is now required to ensure this resolution on the right to a healthy environment serves as a springboard to push for transformative economic, social and environmental policies that will protect people and nature’.

HUMAN RIGHTS AND THE ENVIRONMENT AT THE HUMAN RIGHTS COUNCIL

There are a number of Human Rights Council resolutions that deal with the issue of human rights and the environment. Some of these resolutions explicitly address human rights and the environment, while others recognise the environmental dimensions of related human rights concerns. It is important to consider how both these categories of resolutions can strengthen the relationship between human rights and the environment, and how they can incorporate the right to a healthy environment.

Beginning with the resolutions that directly concern the environment, the Human Rights Council has made thematic resolutions addressing human rights and the environment since 2011. Among other things, these resolutions established the mandate of an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and later a special rapporteur on the same topic. The resolutions also highlight many important aspects of human rights and the environment such as the role of human rights defenders,

the obligation of non-discrimination, the importance of procedural rights in the environmental context, the need to regulate activities that cause environmental harm, and the need to protect ecosystems and biodiversity.

In addition to these resolutions addressing human rights and the environment, the Human Rights Council has also made a series of resolutions concerning human rights and climate change. These resolutions recognize the threat posed by climate change to the realization of human rights, including through sudden natural disasters and slow-onset events. The resolutions include calls upon states to enhance international assistance and cooperation to address climate change; to take human rights

into account within the framework of the UNFCCC; to adopt human rights-based approaches to climate mitigation and adaptation measures; and to better promote the human rights of people in vulnerable situations and include them in climate action. In 2021 the Human Rights Council also decided to appoint a special rapporteur on the promotion and protection of human rights in the context of climate change.

There are other Human Rights Council resolutions with direct relevance for the environment. One such resolution is resolution 45/30 on ‘realizing the rights of the child through a healthy environment’. The resolution highlights the important role of the environment in the health and well-being of children and the need to protect children from environmental harm. States are urged to take measures to consider the best interests of the child and ensure their participation in environmental decision-making; to address the environmental determinants and contributing factors related to health; to develop ambitious climate mitigation measures; and to recognize the right to a healthy environment in national legislation.

The Human Rights Council also adopts resolutions that have implications for the environment or are influenced by the environment. These resolutions are not explicitly concerned with the environment, but have significant links to environmental concerns. Such resolutions include those relating to the rights to water and sanitation; the right to food; the right to adequate housing; hazardous substances and wastes; indigenous peoples’ rights; business and human rights; and human rights defenders. The right to a healthy environment is important for these resolutions, and future

‘[A]s a result of the legal recognition of their right to a healthy environment, many millions of people are breathing cleaner air, have gained access to safe drinking water, have reduced their exposure to toxic substances and are living in healthier ecosystems.’

Former Special Rapporteur on Human Rights and the Environment, John H. Knox

resolutions in such areas will have to consider how the right can be appropriately incorporated.

HUMAN RIGHTS AND THE ENVIRONMENT AT THE GENERAL ASSEMBLY

There are various General Assembly resolutions that concern the environment or particular aspects thereof. These include resolutions on the oceans, atmosphere and climate. While these resolutions may not directly refer to human rights, they demonstrate an appreciation of the relationship between the environment and human well-being through references to adverse impacts on livelihoods, food security, and water and sanitation. Given that a clean, healthy and sustainable environment has been recognised by the General Assembly as a human right, future resolutions of this nature will have to take this right into account.

One of the important thematic areas concerning the environment is the protection of the global climate. The General Assembly's latest resolution on the protection of the climate, resolution 76/205, recognizes the threat posed by climate change and environmental degradation to food security, the availability of water, and livelihoods. States are urged to accelerate the transition to low-emission, climate resilient, inclusive and sustainable economies and societies, and to address the impacts of climate change. The resolution also emphasises the need to enhance adaptive capacity, strengthen resilience, and reduce vulnerability to climate change and extreme weather events.

The General Assembly has also adopted resolutions concerning the protection of the atmosphere. The most recent of these recognizes that the protection of the atmosphere is important for international relations and refers to guidelines concerning the reasonable, sustainable and equitable utilization of the atmosphere that takes the interests of present and future generations into account.

There are also General Assembly resolutions concerning oceans and the law of the sea. The most recent of these resolutions deals with, inter alia, the implementation of the Convention on the Law of the Sea, maritime safety and security, the marine environment and marine resources, marine biodiversity, and regional cooperation. Although it does not directly discuss human rights, the resolution recognises the links between the marine environment and livelihoods and food security as well as the threats posed by climate change, natural disasters and marine pollution, particularly for coastal communities.

There are a number of other resolutions that also concern

the implementation of international environmental law, such as the implementation of the Convention to Combat Desertification and the implementation of the Convention on Biological Diversity. Resolution 76/206 concerns the implementation of the Convention to Combat Desertification and recognizes that combatting desertification contributes to sustainable development for all. The resolution affirms that achieving a land degradation-neutral world would contribute to safeguarding livelihoods, preparing for future pandemics, and ensuring sustainable food production.

General Assembly resolution 76/207 deals with the implementation of the Convention on Biological Diversity. The resolution emphasizes the connection between biodiversity loss and pandemic outbreaks, and affirms the role of biodiversity in maintaining ecosystems, which in turn provide critical services necessary for sustainable development and human well-being. The resolution calls on states and other stakeholders to mainstream the consideration of the socio-economic impacts and benefits of biodiversity and its components within relevant policies and programmes. It also recognizes that the conservation and sustainable use of biodiversity can contribute to reducing disaster risk and adverse climate impacts.

In addition to the abovementioned resolutions directly concerning the environment, there are numerous General Assembly resolutions dealing with thematic areas that are relevant for the environment, including the promotion of a democratic and equitable international order, the right to food, the rights to safe drinking water and sanitation, indigenous peoples' rights, the rights of the child, access to affordable, reliable, sustainable and modern energy for all, and human rights defenders.

Many General Assembly resolutions that may not explicitly deal with the environment and human rights still have relevance for the right to a healthy environment. Future resolutions will have to take the links between human rights and the environment into account and consider the role of the right to a healthy environment.

CONCLUSION

There is no doubt that the relationship between human rights and the environment remains a crucial factor in environmental protection and in the realization of human rights. The right to a healthy environment is likely to become the primary framework for understanding this relationship, particularly in light of its recent recognition by the Human Rights Council and General Assembly.

Incorporating the right to a healthy environment in future resolutions of the Human Rights Council and the General Assembly will assist in mainstreaming the right and advancing its implementation. The findings presented above and the recommendations made below for future Human Rights Council and General Assembly resolutions will hopefully provide a useful point of departure in mainstreaming the right to a healthy environment and consolidating the relationship between human rights and the environment.

As the Special Rapporteur on human rights and the environment has argued, the right to a healthy environment is not an empty vessel waiting to be filled. Its scope and contents have been studied and established in various contexts, including through regional and international jurisprudence and through the work of the current and former Special Rapporteur mandate holders. This does not mean that the right would not benefit from further delineation, but rather that many essential elements of the right have been established and thus provide a point of departure for understanding its scope.

What is required now is the promotion and implementation of the right to a healthy environment. Mainstreaming the right in the work of the Human Rights Council and the General Assembly could contribute to the promotion of the right and also facilitate its implementation. The explicit recognition of the right to a healthy environment is an essential step in advancing human rights and environmental protection for all. However, this recognition is only meaningful if it is followed by further integration of human rights and the environment in international law as well as practical implementation of the right to a healthy environment.

ABOUT THE AUTHOR

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RECOMMENDATIONS

- The Human Rights Council and the General Assembly should affirm the foundational scope and content of the right to a healthy environment as reflected in the work of the Special Rapporteur on human rights and the environment, particularly the Framework Principles on Human Rights and the Environment, and the Good Practices reports. This would provide some coherence and consistency to future resolutions concerning the environment and human rights.
- Future resolutions from the General Assembly that concern the implementation of multilateral environmental agreements (MEAs) should be drafted in accordance with the recognition that the implementation of such MEAs is necessary for the realization of the right to a healthy environment according to General Assembly resolution 76/300.
- Where future resolutions concern human rights with a close relationship to the environment, those resolutions should include specific reference to the right to a healthy environment. However, where other human rights are not explicitly discussed, it is not recommended that references to the right to a healthy environment are shoe-horned into resolutions where this is not appropriate. Given that all human rights are indivisible, interdependent and interrelated, there is a risk that an excess or over-inclusion of references to the right to a healthy environment could overshadow other equally important human rights. In such instances, without direct reference to the right, the contents of the right to a healthy environment could be incorporated where relevant.
- Where future resolutions relate to environmental matters, the elements of the right to a healthy environment should be included and referenced wherever possible. This would affirm the contents of the right and provide consistency in the language used. For example, a resolution concerning climate change could contain a recognition that 'a safe climate' is an essential component of the right to a healthy environment. Using the language employed by the Special Rapporteur, resolutions concerning food and agriculture could incorporate references to 'healthy and sustainably produced food' and resolutions dealing with biodiversity could refer to 'healthy ecosystems and biodiversity'.
- Future resolutions concerning the environment and human rights could also make reference to the Framework Principles on Human Rights and the Environment, or draw from the wording thereof. For example, future resolutions on human rights and indigenous peoples could refer to Framework Principle 15 which sets out key obligations in this context. Similarly, resolutions concerning sustainable development could consider incorporating the language of Framework Principle 16 which states that 'States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development'. The Framework Principles can therefore serve as a guide when drafting resolutions related to the environment and human rights.
- The relationship between human rights and the environment, and between human rights law and international environmental law, should be further explored and developed in order to understand the relationship between the right to a healthy environment and these branches of international law.

SELECTED REFERENCES ON THE RIGHT TO A HEALTHY ENVIRONMENT

[Academy Briefing N° 21: Human Rights and The Environment](#)

[Human Rights Council Resolution 48/13 on the Human Right to a Clean, Healthy and Sustainable Environment](#)

[UN General Assembly Resolution 76/300 on the Human Right to a Clean, Healthy and Sustainable Environment](#)

[Framework Principles on Human Rights and the Environment](#)

[Report of the Special Rapporteur on Human Rights and the Environment: Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment](#)

[Report of the Special Rapporteur on Human Rights and the Environment: Right to a Healthy Environment - Good Practices](#)

[Annual thematic reports of the Special Rapporteur on Human Rights and the Environment](#)

[Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters \(Aarhus Convention\)](#)

[The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean \(Escazú Agreement\)](#)

[UN Declaration on the Rights of Indigenous Peoples](#)

[UN Declaration on the Rights of Peasants and Other People Working in Rural Areas](#)

[UN Environment Programme, Compendium on Human Rights and the Environment: Selected International Legal Materials and Cases](#)

[Guide to the Case-Law of the European Court of Human Rights: Environment](#)

[McInerney-Lankford, Darrow & Rajamani, Human Rights and Climate Change: A Review of the International Legal Dimensions](#)

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TOWARDS A BETTER PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT

In 2021 and 2022, the UN Human Rights Council and General Assembly recognized the right to a healthy environment as a human right. Building on this recent recognition, the Geneva Academy project on the right to a healthy environment aims at mainstreaming this right and the protection it affords in the work of the UN Human Rights Council, its Special Procedures and Universal Periodic Review, as well as in the work of the UN General Assembly and UN Treaty Bodies. Mainstreaming this right will provide guidance for judicial and administrative decision-making related to the environment and human rights, encourage states to prioritize its implementation through legislation, policy and resource allocation, and potentially provide access to justice and remedies for those who suffer from the impacts of environmental degradation and climate change.

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